

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN “SMC” BENCH, DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No.45/DDN/2024
Assessment Year: 2012-13

Institute of Clinical Research India Society, 1 st Floor, Building No.1, Treenetra Vihar, Near Kargt Chowk, Dehradun	Vs.	Commissioner of Income Tax (Appeals), Dehradun
PAN :AABAI3710P		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Amar Pal Singh, Sr. DR

Date of hearing	17.03.2025
Date of pronouncement	13.06.2025

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2012-13, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1061095391(1), dated

19.02.2024, involving proceedings under sections 147 r.w.s. 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Case called twice. None appears at the assessee's behest. It is accordingly proceeded ex-parte.

3. Learned departmental representative vehemently argues during the course of hearing that both the learned lower authorities have rightly disallowed the assessee's expenditure claim for not having deducted TDS thereupon to the tune of Rs.12,10,250/-, in the course of assessment framed on 19.11.2019 and upheld in the lower appellate discussion.

4. That being the case, the Revenue could hardly dispute the clinching fact that the assessee/appellate; who happens to be the registered trust, is already entitled for section 11 exemption; and, therefore, we are of the considered view that such a disallowance made in its hands is not sustainable in light of tribunal's coordinate bench's order in ITA No. 4138/Mum/2011 [M/s. Mahatma Gandhi Seva Mandir Vs. DDIT(E), dated 11.05.2012], as under:

"3. The relevant facts for adjudication of ground No.1 are that the assessee is a charitable institution engaged in carrying out religious and charitable activities within the ambit of section 2(15) of the Income Tax Act. These charitable activities have been recognised by the Department and a certificates under section 12A and 80G has also been granted by the competent authority. During the course of the scrutiny proceeding, the Assessing Officer on perusal of auditor's

report enclosed with the return found that the assessee did not deduct TDS on certain amounts to which the various provisions of Sections 193 & 194 were applicable. The Assessing Officer held that in relation to the following payments, the assessee has failed to deduct TDS :-

i) Payment made to Mrs. Suchita Chougule (architect)	-Rs.52,550/-	
ii) Legal fees to Khona & Kayser (Solicitors)	- Rs.52,227/-	
iii) Professional fees to Dr. Bajaj(Radiologist)	-Rs.95,830/-	
iv) Consultancy fees to Deepak Bhadra	Rs.38,540/-	
Dr.Kotkar	Rs.32,830/-	
Dr. Priyasha	Rs. 34,480/-	<u>Rs.1,05,850/-</u>
		<u>Rs.3,06,457/-</u>

and accordingly he disallowed the entire payments on the ground that TDS under Section 194J have not been deducted and added to total income of the assessee.

4. Before the CIT(A), the assessee's contention was that the provision of Section 40(a)(ia) are not applicable in the case of the assessee's trust as the expenditure in a case of a trust has to be seen from the point of view of application of income for a charitable purposes. However, the CIT(A) did not find any merit in the said contention of the assessee and held that Section 40(a)(ia) is applicable in the assessee's case and addition on account of non- deduction of TDS is justified.

5. Learned AR appearing on behalf of the assessee submitted before us that the assessee is a trust which is registered under Section 12A and his income has to be computed as per Section 11. The provisions of Section 40 will not be applicable as the same pertains to computation under the head "business or profession". In support of his contention, he relied upon the order passed by the ITAT Amritsar Bench in the case of Baba Farid Vdyak Society, Bhatinda Vs. ACIT, vide order dated 31st January 2011 in ITA No.180(ASR)/2010.

6. Contrary to this, learned Senior DR submitted that provisions of TDS are applicable to all the assessee's amount deducted and any non-deduction of TDS will amount to disallowance of the claim of the payment in view of the provision of Section 40(a)(ia). Accordingly, he relied heavily upon the findings of the CIT(A) and Assessing Officer.

7. We have carefully considered the rival submissions of both the parties and also the impugned order before us. It is an admitted fact that the assessee is a charitable trust, which is duly registered under Section 12A and accordingly its income and expenditure is computed in terms of section 11. The issue before us is whether the disallowance under Section 40(a)(ia) can be made for the non-

deduction of TDS under Section 194 in the case of such kind of assessees. Under the Income Tax Act, computation of total income is made under the various heads of income, viz :-

- i. Salary
- ii. Income from house property
- iii. Profits and gains from business or profession
- iv. Capital gains
- v. Income from other sources.

7.1. Now, let us examine Section 11 and Section 40 to decide this controversy. Section 11 to 13 is a part of Chapter 3 under the heading "Income which does not form the part of the total income". Section 11 (1) provides that "subject to the provisions of Section 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income". Thereafter it is provided as to how the income and to what extent it can be applied for charitable purposes. The manner in which the income can be applied has been laid down in Section 11(1) to Section 11(5). Section 13 provides exception to Section 11 wherein such an income can be excluded from the exempt income of the trust. Thus, Section 11 to 13 provides for application of income by a trust for charitable purposes and to that extent, subject to certain conditions, income of the trust is treated to be exempted from taxation. The incomes which are computed under the various heads of income, the mode of computation has been provided under respective sections.

7.2 Here we are concerned with Section 40, which is part of computation of profit and gains from business or profession. The profits and gains from business or profession are computed under Section 28 and section 29 states that "the income referred to in Section 28 shall be computed in accordance with the provisions contained in Section 30 to 43 D". Thus, Section 30 to 43 provides various kinds of deductions which are to be made while computing the profit of the assessee from business or profession. Section 40 provides an exception to such deductions which have been provided in Section 30 to 38 and starts with a non obstante clause reading as under :-

"notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "profits and gains of business or profession".

Thus, Section 40 is applicable only when deductions under Sections 30 to 38 are being made in computing the income chargeable under the head "profits and gains of business or profession" under Section 28. The exception in Section 40 is carved out, only for the purpose of Section 28 and not for computing the exemption of income of a charitable trust under Section 11. The disallowance made

under Section 40(a) will only go to enhance the business profit of an assessee whose income is assessable under section 28 and not otherwise. Hence, provisions of section 40(a) are not applicable in case of charitable trust or institution where income and expenditure is computed in terms of section 11.

8. Accordingly, we do not find any merit in the orders passed by the Assessing Officer as well as by the CIT(A) and delete the disallowance made under Section 40(a)(ia) on account of non- deduction of TDS for sum of Rs.3,06,457/- and the Ground No.1 as raised by the assessee stands allowed.”

5. We adopt the above detailed reasoning *mutatis mutandis* to delete the impugned section 40(a)(ia) disallowance made in the assessee’s hands in very terms.

6. This assessee’s appeal is allowed.

Order pronounced in the open court on 13th June, 2025

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 13th June, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi